

FLIP CHART TRANSCRIPTIONS

Questions/Comments Following Bill Cox Presentation

#1

- River Basin plans:
 - Valuable info in some cases
 - Need updating
 - Could use dispute resolution in planning, analysis of alternatives
 - Need continuity
- Conflict resolution/negotiation early in process to avoid problems

#2

- Planning should include all uses
- Facilitation, by state, of discussion forums
- State role in coordination of broader view – water quality, off-stream uses, habitat
 - River basin commission
 - State/regional view
- State role in dealing with Feds – EPA, Corps, etc.

#3

- Emerging issues:
 - Development
 - Siting
 - Land-use planning
 - Growth management tool?
 - Impacts of development
 - Need for re-charging/renewal of resources over time – comprehensive look
- 1975 – Safe Drinking Water Act and subsequent
- Need for strong executive leadership
 - MD represents localities with Feds
- Data collection and analysis necessary – especially groundwater

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Questions/Comments Following Fred Fisher Presentation

#1

- Inter-basin transfer
 - Utilities do this all the time
 - Is there a problem down the road
- Non-riparian use: upstream user could challenge
- American rule – Circuit Court seems to be moving in this direction
- Large use of groundwater (new use) requires permit

#2

- Commonwealth has right to regulate; owner has right to use – if too much in conflict, may constitute a taking
- Water rights attach to land – can be severed
- Potomac Low-flow Allocation Agreement
 - How was figure arrived at?
 - “Plug number”?
- MD asserts right to regulate rights in Potomac (even VA riparian rights)

#3

- Recent request from Fairfax to place pipe – political football – VA filed suit on compact theory and constitutional law theory (interstate stream – equitable allocation among states)
- Supreme Court – Special Master said MD can’t regulate; MD filed exceptions; Supreme Court will rule
- Article 11
 - State has right to regulate
 - Question: when is it a taking?

Fred Fisher presentation, continued:

#4

- CA case: Mono Lake
 - Public Trust doctrine
- 1930's – VA case – no public trust, BUT:
 - Constitution is clear that there IS public trust
 - State can regulate
 - Has obligation to do it
 - If damaged, has obligation to compensate
- King's Grants
 - Water rights separate from land
- 1970's AG opinion
 - Inter-basin transfer
 - State can grant

#5

- Can we get to effective statewide planning with the foundation of riparian rights?
 - Through permitting
 - State regulating flow-by for natural resources
 - *De facto* prior appropriation
- Interstate issues
 - VA against MD/PA re:flow into estuary (Chesapeake Bay)
 - Original case to Supreme Court
- “Domestic” use is typically defined as farm family and animals

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Questions/Comments Following John Kauffman Presentation

#1

- Water withdrawals
 - Variability
 - Mimics natural system
 - No one level that meets the needs of all biota – some thrive in drought, others in flood
 - Room for human use within the natural range of variability
 - Permeability of watershed affects variability as well

#2

- Permitting
 - Based on % of mean annual flow
 - May also be % exceedances for specific dates
- PHABSIM [Physical Habitat Simulation] is complex modeling system to look at variability
- DGIF recommends flow to DEQ
 - Trying to address cumulative system wide loss
 - “stacking” of effects
- Balance
 - Needs/desires of recreational and natural users and water supply
 - Annual system vs. one constant level

#3

- Look at individual site studies – see if possible to look more generally, more broadly
- “Tennant Method”
 - Concerns about its use in regulating

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Questions/Comments Following Wagner/Haynes/Nelms Presentation

#1

- Movement of groundwater – study/research to create model
- Any info re: management of “recharge areas” to help localities in planning?
 - Washington state; NJ highlands – modeling
 - Difficult to define “recharge areas,” especially in karst

REQUESTS FOR FUTURE PRESENTATIONS/INFORMATION

- DEQ on its process (permitting)
- VDH and DEQ: How They Fit Together
- Report on DEQ’s Report
- Safe Yield Estimation and Reliability
- Water Demand Forecasting
- What Other States are Doing
- Some written information re: MIF (brief explanation of Tennant Method, Percent exceedances, etc.)
- Land Use – Water Connection
- Drought Response Task Force
- Local Supply Planning (for a later meeting)